

ARKANSAS SUPREME COURT

No. CR 05-834

NOT DESIGNATED FOR PUBLICATION

JESSIE EARL HILL
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 18, 2006

PRO SE APPEAL FROM THE CIRCUIT COURT
OF GRANT COUNTY, CR 98-38-1, HON.
CHRIS E. WILLIAMS, JUDGE

AFFIRMED

PER CURIAM

In 1995, a jury found appellant Jessie Earl Hill guilty of capital murder and sentenced him to life imprisonment without parole. This court affirmed the judgment. *Hill v. State*, 325 Ark. 419, 931 S.W.2d 64 (1996). In 2003, appellant filed in the trial court a *pro se* petition for writ of *habeas corpus* pursuant to Act 1780 of the 2001 Acts of Arkansas. The trial court denied and dismissed the petition without a hearing. Appellant now brings this appeal of that order.

In the order denying the petition, the trial court found that appellant had failed to show any new or novel scientific evidence which would support his claim of actual innocence and that the petition failed to support the issuance of the writ or the necessity of a hearing. We do not reverse a trial court's decision granting or denying postconviction relief unless it is clearly erroneous. *Johnson v. State*, 356 Ark. 534, 157 S.W.3d 151 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Id.* The trial court's findings in this case were not clearly erroneous.

Under the act as in effect when appellant filed his petition,¹ a number of predicate

¹ Act 1780 of the 2001 Acts of Arkansas was amended by Act 2250 of 2005.

requirements must be met before a circuit court can order that testing be done. *See* Ark. Code Ann. §§ 16-112-201 to -203 (Supp. 2003). *See also, Graham v. State*, 358 Ark. 296, ___ S.W.3d ___ (2004) (*per curiam*). Section 16-112-202(a)(1) provided that:

[A] person convicted of a crime may make a motion for the performance of fingerprinting, forensic deoxyribonucleic acid testing, or other tests which may become available through advances in technology to demonstrate the person's actual innocence if:

(A) The testing is to be performed on evidence secured in relation to the trial which resulted in the conviction; and

(B) The evidence was not subject to the testing because either the technology for the testing was not available at the time of the trial or the testing was not available as evidence at the time of the trial.

Section 16-112-202(c)(1) provided that testing be performed if:

(A) A prima facie case has been established under subsection (b) of this section;

(B) The testing has the scientific potential to produce new noncumulative evidence materially relevant to the defendant's assertion of actual innocence; and

(C) The testing requested employs a scientific method generally accepted within the relevant scientific community.

A circuit court need not hold a hearing if the petition and the files and records show that a petitioner is not entitled to relief. Ark. Code Ann. § 16-112-205(a) (Supp. 2003).

Appellant states in his brief that he requests testing of the murder weapon for fingerprints, and further requests that those prints be submitted to the Automated Fingerprint Identification System ("AFIS") for identification and for comparison to two particular individuals. AFIS was not, appellant alleges, available at the time of appellant's trial. Appellant, however, did not include this request in his petition to the trial court. The petition does not identify any item to be tested, nor does it allege any advances in any technology that were not available at the time of appellant's trial. The petition references fingerprints, but only in rambling, somewhat incoherent, arguments concerning sufficiency of the evidence. Although he cites the Act, appellant's petition never specifically requests any testing, and instead attempts to raise issues such as trial error and ineffective assistance of counsel, which are not cognizable in a petition for writ of *habeas corpus*. Clearly, the trial court correctly found that appellant's petition was not sufficient to support the issuance of the writ or a hearing.

Rather than attempting to provide any real factual basis for his argument by identifying

information that was included in his petition, appellant allocates the majority of his brief before this court to arguments touching upon prosecutorial misconduct, ineffective assistance of counsel, various trial errors, and sufficiency of the evidence. To the extent that these issues were even raised below, they are not cognizable in a petition for writ of *habeas corpus*. Act 1780 does not provide a substitute for a proceeding under Ark. R. Crim. P. 37.1. *Graham*, 358 Ark. at 298, S.W.3d at _____. As appellant did not submit an adequate petition to the trial court on which to grant relief under Act 1780, we hold that the court did not err in dismissing the petition without a hearing.

Affirmed.